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ABSTRACT

This audit report examines the process used by the New York State Education Department in setting tuition rates for schools that provide special education programs. The audit specifically addresses two concerns: first, whether the current process adequately ensures that reimbursable tuition costs are reasonable, necessary, and directly related to the special education programs; and second, whether alternative reimbursement methodologies might be used. The audit finds that reimbursable tuition costs are more likely to meet these criteria if the costs claimed by providers are analyzed more extensively by the Department. The audit also finds that a number of benefits might be realized if alternative reimbursement methodologies are considered. These alternatives include: comparison of student-to-staff ratios at the providers to ratios approved by the department; comparison of costs claimed by a provider to those claimed by similar providers; and consideration of performance-based criteria and incentives in new rate setting procedures for preschool special education programs. Following an introductory section, examination of the rate setting process considers student-to-staff ratios, cost of therapy services, comparative cost analysis, and alternative reimbursement methodologies. Exhibits and appendices include student-to-staff ratios at selected special education providers and comments of Department officials, who agree with the report's recommendations. (DB)

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ED 439 534

State of New York
Office of the State Comptroller
Division of Management Audit and State Financial Services

STATE EDUCATION DEPARTMENT

TUITION RATE SETTING PROCESS FOR SCHOOLS PROVIDING SPECIAL EDUCATION PROGRAMS

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State of New York
Office of the State Comptroller

Division of Management Audit and
State Financial Services

Report 98-S-39

Mr. Carl T. Hayden
Chancellor of the Board of Regents
The University of the State of New York
State Education Building
Albany, NY 12234

Dear Chancellor Hayden:

The following is our report on the process used by the State Education Department in setting tuition rates for schools that provide special education programs.

This audit was done according to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. We list major contributors to the report in Appendix A.

Office of the State Comptroller
Division of Management Audit
and State Financial Services

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April 15, 1999

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Executive Summary

State Education Department
Tuition Rate Setting Process for Schools Providing Special Education Programs

Scope of Audit

Students with special needs (handicapping conditions) may be taught in separate schools whose costs are reimbursed by the counties or school districts in which the students reside. The counties and school districts are then reimbursed, to a large extent, by the State Education Department (Department). The tuition reimbursement rates paid to the schools are set by the Department on the basis of the costs previously incurred by the schools in providing special education programs. The rates, which must be approved by the Division of the Budget, allow the schools to recover all the costs considered reimbursable by the Department. The costs claimed by a school as reimbursable must be audited by a CPA and are further audited by the Department to ensure they are reasonable, necessary and directly related to the special education programs. For the 1995-96 school year, the Department approved $746.5 million in reimbursable costs for 651 of these special education programs. The programs were provided by 471 specially established schools.

Our audit addressed the following questions about the Department's process for setting tuition rates for special education programs provided in separate schools for the period July 1, 1996 through October 31, 1998:

- Did the process adequately ensure that reimbursable tuition costs were reasonable, necessary and directly related to the special education programs?

- Could alternative reimbursement methodologies be used in the process?

Audit Observations and Conclusions

We found reimbursable tuition costs are more likely to be reasonable, necessary and directly related to special education programs if the costs claimed by providers are analyzed more extensively by the Department. We also conclude that a number of benefits may be realized if alternative reimbursement methodologies are considered for the programs.

Even though about three-quarters of tuition costs claimed by program providers are personal service costs, the Department does not determine whether these costs appear to be reasonable. To make such a determination, Department staff could compare student-to-staff ratios at the providers to the ratios approved by the Department for program effectiveness.

While these ratios are intended to indicate the minimum staffing levels needed for adequate program services, if a program's actual staffing level were significantly greater than the minimum required level, the program's personal service costs could be unnecessarily high. When we performed such a comparison for a sample of 25 schools, we identified a number of programs in which the actual staffing levels were much higher than the minimum level. In such instances, the Department could determine whether the additional staff could be justified by the circumstances of the program, and if not, work with the provider to create a more appropriate student-to-staff ratio. (See pp. 5-7)

To evaluate the reasonableness of costs, the Department could also compare the costs claimed by a provider to those claimed by similar providers. As a result of such analyses, the Department would identify variances in program costs. Such variances could indicate opportunities for improvement at some providers and could also lead to the identification of best practices that could be shared with other providers. When we performed such an analysis on the special education program costs reported by all providers for the 1995-96 school year, we found that the daily cost per student varied significantly among different providers of the same type of program. For example, the daily cost per student for one type of program ranged from $45 to $228. If Department staff determined why costs for similar activities varied to such a large extent, they might be able to identify areas where costs could be reduced without compromising the quality of the services. (See pp. 8-10)

Department officials are considering whether to develop new rate setting procedures for preschool special education programs. We encourage efforts to improve the rate setting process, and in particular, believe consideration should be given to developing a process which includes performance based criteria and incentives. We encourage Department officials to work with program providers and other relevant parties to explore the concept of performance-based reimbursement for special education services. (See pp. 11-13)

We noted that the Greenburgh Eleven School District's per pupil costs ranked ninth highest among the 207 school-aged programs. Follow up showed that the District's reimbursement included the salaries of 14 teachers who were removed from teaching duties in 1994 as part of a disciplinary action. We recommend that the Department be as proactive as possible in resolving this matter and determine whether it is correctly handling these costs in the tuition rate setting process. (See pp. 13-14)

Comments of Department Officials

Department officials agree with our recommendations.

Contents

Introduction

Background 1
Audit Scope, Objective and Methodology 2
Response of Department Officials 3

Rate Setting Process

. 5
Student-to-Staff Ratios 6
Cost of Therapy Services 7
Comparative Cost Analysis 8
Alternative Reimbursement Methodologies 11
Other Matter 13
Recommendations 15

Exhibit A

Student-to-Staff Ratios at Selected Providers of Special Education Programs 1995-96 School Year

Appendix A

Major Contributors to This Report

Appendix B

Comments of Department Officials

Introduction

Background

Children with special needs (handicapping conditions) may be taught in various types of classroom situations. For example, they may be taught in classrooms that also contain non-handicapped children (a less restrictive environment) or they may be taught in classrooms that contain only handicapped children (a more restrictive environment). Many of the handicapped children in a more restrictive environment are taught in separate schools, often referred to as center based, set up for the express purpose of meeting the needs of these children.

In accordance with Title VI of the Education Law, the Commissioner of Education develops annual tuition rates to be used to reimburse providers for the cost of special education programs. The rates are established based upon actual, historical costs that meet eligibility criteria and must be approved by the Division of the Budget. The counties initially pay the tuition reimbursement for preschool programs. For elementary and secondary programs, the school districts in which the students reside initially pay the tuition reimbursement. The State Education Department (Department) then reimburses the counties for about 60 percent of their tuition payments and reimburses the school districts for most of their tuition payments. In this way, the costs of center-based special education programs are shared by the State and by local governments.

Students are placed in special education programs by Committees on Special Education that are established by each school district. Each student is given an individualized education program that describes the child's disabilities, needs and educational goals. For example, an individualized education program could indicate the number of weekly therapy sessions and the supervision level required by the child. In order to be eligible for State reimbursement, a special education program must be approved by the Department.

During the 1995-96 school year, the Department established tuition rates for 651 center-based special education programs operated by 471 providers, as follows:

	Providers	Programs	Tuition Cost
School-Age Programs	207	266	$323,375,360
Preschool Programs	264	385	423,163,886
Totals	471	651	$746,539,246

Audit Scope, Objective and Methodology

We audited the process used by the Department to set tuition rates for center-based special education programs for the period July 1, 1996 through October 31, 1998. The objective of our audit was to determine the extent to which the process helps ensure that the programs are efficient and economical. In particular, we examined whether the Department's procedures ensure that reimbursable tuition costs are reasonable, necessary and directly related to the approved special education program. We also examined whether alternative reimbursement methodologies could be used for center-based special education programs. To accomplish our objective, we interviewed Department and provider officials, and compiled and analyzed relevant data maintained by the Department. We focused on data relating to the 1995-96 school year, because it was the most current data available at the time of our audit. We contacted a total of 25 providers, and visited four of these providers.

We did our audit according to generally accepted government auditing standards. Such standards require that we plan and do our audit to adequately assess Department operations that are within our audit scope. Further, these standards require that we understand the Department's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations included within our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to audit. This approach focuses our audit efforts on those operations identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use our finite audit resources to identify where and how to make improvements. Thus, we devote little audit effort to reviewing operations that may be efficient or effective. As a result, we prepare our audit reports on an "exception basis." This

report, therefore, highlights those areas needing improvement and does not focus on activities that may be functioning properly.

Response of Department Officials

A draft copy of this report was provided to Department officials for review and comment. Their comments have been considered in preparing this report and are included as Appendix B.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chancellor of the Board of Regents shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Rate Setting Process

The tuition rates for center-based special education programs are set by the Department's Program Services Reimbursement Unit (PSRU). The annual tuition reimbursement rate for each program is based on (1) a PSRU estimate of the program's allowable costs for that year (this estimate is based on the actual costs previously incurred by the program), and (2) adjustments as a result of audits of actual costs.

Schools must submit to the PSRU their special education program costs as audited by a CPA. The PSRU then conducts desk audits of the reported costs to ensure that the costs comply with Department guidelines for allowable reimbursable costs. According to these guidelines, reimbursable tuition costs should be reasonable, necessary and directly related to the approved special education program. The guidelines specify certain types of costs as eligible for reimbursement, such as employee salaries, and limit the extent to which some costs can be reimbursed. For example, annual increases in total tuition costs are limited to a certain percentage for each county and non-direct costs such as administrative and maintenance costs are limited to 30 percent of total program costs. For the 1995-96 school year, the actual costs reported by providers (after CPA audits) totaled $781.7 million, but as a result of $21.1 million in PSRU desk audit adjustments as well as $14.1 million in other adjustments, the costs were reduced to $746.5 million in approved costs.

The costs approved for a program by the PSRU may subsequently be audited by the Department's Administrative Audit Unit or by the county in which the program is located. Between August 1989 and March 1998, the Department's Administrative Audit Unit conducted 66 such audits and counties conducted 78 such audits. The Department's audits disallowed $9.1 million in approved costs and the counties' audits disallowed $10 million in approved costs.

The rate setting process does not include an assessment of the reasonableness of teacher and therapy staff levels or identification of significant cost variances among providers. As is described in the remainder of this report, if the Department improved its analysis of actual costs and considered different options for reimbursement methodologies, there would be greater assurance that schools are reimbursed only for costs that are reasonable, necessary and directly related to special education programs.

Student-to-Staff Ratios

During the 1995-96 school year, personal service costs accounted for 77 percent of the special education program costs incurred by program providers. Despite the significance of these costs, the Department does not try to determine whether the personal service costs claimed by program providers appear to be reasonable. The Department could make this determination in a number of different ways. For example, Department staff could try to determine whether a program was overstaffed by comparing the program's student-to-staff ratios to the ratios approved for the program by the Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID). If the ratios for a program were found to be too low (i.e., if there were significantly fewer students per teacher than approved by VESID), the program's personal service costs could be unnecessarily high.

We note that the ratios developed by VESID are designed to indicate the *minimum* staffing levels necessary to ensure adequate program services. For example, if a program is approved for a student-to-teacher ratio of 10 to 1, the program should have at least one teacher for every ten students. If the program has one teacher for every 15 students, its student-to-teacher ratio is too high, and as a result, the services provided to the students may not be adequate. However, if the program has five teachers for every ten students, its student-to-teacher ratio is lower than the approved ratio. While the quality of the program services may be enhanced by this lower ratio, the program may not be cost-effective with so many teachers per student. If Department staff compared actual student-to-staff ratios to the ratios approved by VESID, it could follow up on the ratios that were significantly lower than the approved ratios to determine whether the enriched staffing levels could be justified by the circumstances of the programs. If an enriched staffing level could not be justified, Department staff could work with the school to adjust accordingly, while preserving program quality. Excessive staffing costs would then be removed from the program's reimbursable tuition costs.

PSRU officials told us that they used to analyze student-to-staff ratios as part of their desk audits, but they stopped performing this analysis several years ago. We believe such an analysis should be included in the PSRU's review of provider costs. As shown in Exhibit A, we performed such an analysis on 25 selected providers for the 1995-96 school year.

For our analysis, we judgmentally selected a sample consisting of 13 preschool program providers and 12 school-age program providers, and tried to balance the number of high-cost and low-cost providers in each group. For each provider, we compared the student-to-teacher ratio and the student-to-teacher aide ratio approved by VESID for the provider's program(s) to the actual number of students, teachers and teacher aides in

the program(s) during the 1995-96 school year. Since some providers operated more than one program, different ratios may have been approved by VESID for each program. However, in our comparison, we calculated an overall student-to-teacher ratio or overall student-to-teacher aide ratio and compared this overall ratio to the different ratios approved for each individual program. We considered the overall ratio higher or lower than the approved ratios only when the overall ratio was either lower than the lowest approved ratio for all the programs provided by that school or higher than the highest approved ratio for all the programs provided by that school. In making our calculations, we used the data reported to the Department by the providers.

As shown in Exhibit A, the overall ratios at some of the providers were significantly lower than the maximum ratios approved by VESID, and the overall ratios at other providers were higher than the ratios approved by VESID. For example, VESID approved a student-to-teacher ratio of 12:1 (i.e., at least one teacher for every 12 students) for Sullivan Diagnostic Center, which provided a school-age program. However, we determined that this program actually had a student-to-teacher ratio of 6.5 (one teacher for every 6.5 students), which was nearly twice as many teachers per student as the minimum number approved. For JGB Education Services, which provided two types of school-age programs, VESID approved student-to-teacher aide ratios of 12:1, and 3:1 for the two programs. However, we determined that the provider's overall student-to-teacher aide ratio for both programs combined was 2.7:1, which indicates that the provider had more teacher aides per student than the minimum number for either of the two programs. For the School of the Holy Childhood, which provided two types of school-age programs, VESID approved student-to-teacher aide ratios of 12:1 and 8:1. However, we determined that the provider's overall student-to-teacher aide ratio was 17.9:1, which indicates that the provider had far fewer teacher aides per student than was required for either program. If PSRU staff performed this kind of analysis, they could identify such variances, which could be indicative of inefficiency (if the provider is overstaffed) or ineffectiveness (if the provider is understaffed). Either way, the Department should understand the nature and justification for extreme variances.

Cost of Therapy Services

Program providers employ or contract with various types of therapists, including speech therapists, occupational therapists and physical therapists. The cost of the services provided by these therapists can be significant. For example, during the 1995-96 school year, therapy services accounted for 11.3 percent (excluding fringe benefits) of all the approved program costs incurred by the 25 providers in our sample. At one of these providers, the Infant and Child Learning Center, the therapy services cost

an average of $20,070 per full time equivalent child for the year, including fringe benefits.

When we asked Department officials if they analyzed the providers' therapy costs to ensure that the costs were reasonable, they told us that they did not. Considering the significance of these costs, we believe such an analysis would be beneficial. For example, the therapists used in center-based special education programs spend some of their time on direct program activities (such as working with students) and some of their time on non-direct activities (such as administrative tasks). When we analyzed how the therapists at the four providers we visited spent their time during the 1995-96 school year, we identified significant variances, as the therapists for UCP Tri-County spent 69 percent of their time on direct program activities, the therapists for UCP Capital District spent 48 percent of their time on direct program activities, and the therapists for the Infant and Child Learning Center spent only 20 percent of their time on direct program activities.

If the therapists who spend a significant portion of their time on non-direct activities were to spend more time on direct program activities instead, the providers employing these therapists might need fewer therapists and might be able to reduce their costs accordingly. We note that the Infant and Child Learning Center, where therapists spent 80 percent of their time on non-direct activities, had the highest tuition rate ($350 per child per day) in the State during the 1995-96 school year. If Department staff analyzed the providers' therapy costs, they could identify situations in which actions could be taken to reduce therapy costs. To facilitate such an analysis, Department staff could develop guidelines indicating how much time can be spent by a therapist on non-direct activities before the percentage becomes unreasonable, and require providers to report the direct time/non-direct time percentages for their therapy costs. We note that six of the providers in our sample have developed guidelines for direct therapist time; none of these providers expect their therapists to spend less than 64 percent of their time on direct program activities and one of the providers expects its therapists to spend at least 90 percent of their time on direct program activities.

Comparative Cost Analysis

The Department collects cost data from all providers of center-based special education programs. If the data from each provider were compared to the data from other similar providers, variances in program costs would be identified. While there may be valid reasons for the variances, they could also indicate opportunities for improvement in some providers' program efficiency or effectiveness. The variances could also lead to the identification of best practices that could be shared with other providers.

However, we found that Department staff do not perform this type of comparative analysis. As a result, they are unable to identify such improvement opportunities and best practices.

We performed this type of comparative analysis on the special education program costs reported by providers for the 1995-96 school year. We found that the reported daily cost per child varied significantly from program to program. The following table shows the variances in program cost for the 25 providers included in our sample:

The Daily Cost Per Child at Selected Providers of Special Education Programs 1995-96 School Year

PROVIDERS	COST PER CHILD PER DAY
PRESCHOOL PROGRAMS	
BOCES ORLEANS-NIAGARA	$117.62
CHILD STUDY CENTER	$106.46
GINGERBREAD LEARNING CENTER	$108.37
HIGHBRIDGE ADVISORY COUNCIL	$110.56
INFANT & CHILD LEARNING CENTER	$350.00
KENNEDY CHILD STUDY CENTER	$178.59
RAINBOW	$82.90
SCHNEIDER CHILDRENS HOSPITAL	$213.58
ST. AGNES HOSPITAL	$86.87
STEPPINGSTONE DAY SCHOOL	$213.71
THESE OUR TREASURES	$223.49
UCP WESTCHESTER	$166.88
UCP QUEENS	$155.18
SCHOOL AGE PROGRAMS	
ABBOTT UFSD	$155.56
BERKSHIRE UFSD	$87.03
CHILD SCHOOL	$91.25
CLEAR VIEW SCHOOL	$164.57
GUSTAVUS ADOLPHUS LEARNING CENTER	$85.83
JGB EDUCATION SERVICES	$199.66
SCHOOL OF THE HOLY CHILDHOOD	$83.99
ST. DOMINIC SCHOOL	$150.69
UCP SULLIVAN DIAG. TREATMENT CENTER	$161.59
SUMMIT SCHOOL	$90.92
UCP TRI-COUNTY	$97.66
UCP CAPITAL DISTRICT	$158.20

In addition, when we compared costs among similar types of preschool programs and among similar types of school-age programs, we continued to identify large cost variances. For example, among the 245 school-age Special Class programs, the daily cost per student ranged from $45 to $228. Among the 292 preschool Special Class programs (more than 2.5 hours a day), the daily cost per student ranged from $40 to $350. If Department staff were to contact officials at selected schools to determine why costs for similar activities varied to such a large extent, they might be able to identify areas where costs could be reduced without compromising the quality of the services or areas where costs needed to be increased to ensure an adequate level of services. They also might be able to identify best practices that could be shared with other schools.

We followed up on some of the higher costs identified by our analysis to determine why the costs were so high. As shown by the following example, we identified costs that may be unnecessarily high. According to the data reported by providers for the 1995-96 school year, the highest daily cost per child was $350 at the Infant and Child Learning Center (ICLC), which is located in Brooklyn. When we contacted ICLC officials, they told us that several factors, such as high space rental costs, contribute to their high tuition rate. In addition, since ICLC's services are provided under the auspices of the State University of New York Research Foundation, ICLC is required to pay an annual fee of about 10 percent of its revenue (about $100,000) to the Foundation for administrative services provided to ICLC by the Foundation. According to ICLC's Executive Director, some of these services duplicate activities performed by ICLC's own administrators.

We believe Department staff should follow up on ICLC's high costs to determine whether the costs can be reduced without compromising the quality of the services. For example, earlier in this report, we noted that the therapists at ICLC spent 80 percent of their time on non-direct activities. We question whether it is appropriate for so much of the therapists' time to be spent in this way. We also question whether it is appropriate for ICLC, which serves about 30 students, to pay $100,000 (or more than $3,000 per child) a year for administrative services, some of which are duplicative. If Department staff contacted officials at similar programs where the reported costs are lower, they might be able to identify practices that could be used by ICLC officials to lower their costs. Again, the Department should understand the circumstances of these types of variances to promote efficient and effective programs.

Alternative Reimbursement Methodologies

Department officials are considering whether to modify their procedures for setting tuition rates for preschool programs. We encourage Department officials to seek improvements in the rate setting process, and accordingly, urge them to consider other possible methods for reimbursing providers. We evaluated four such methods in our report 95-D-37, issued in June of 1998, which addressed the Early Intervention Program operated by the Department of Health. In this program, children up to three years of age may be tested and treated for developmental disabilities. As is the case in center-based special education programs, Early Intervention Program services are delivered by authorized service providers who are reimbursed by the counties. The counties in turn are reimbursed by Medicaid, third-party payers and New York State. Since the Early Intervention Program is similar to center-based special education programs, we believe our assessments of four possible reimbursement methodologies for the Early Intervention Program could be of use to Department officials. Descriptions of the four methodologies, which are also discussed in our report 95-D-37, follow:

- **Fee-for-Service Reimbursement** - Providers are paid a set price or fee for each specific unit of service they provide to the recipient. This method provides an incentive to the providers to deliver the full extent of services a client needs because they will be paid for each unit of service they deliver. However, it also provides an incentive for unscrupulous providers to manipulate the system to increase revenues, for example, by supplying unnecessary services, supplying services with the highest fee or profit level, and breaking single services into multiple, and therefore, more expensive billable services.

- **Cost-Based Reimbursement** - This is the method used by the Department for center-based special education programs. Allowable costs are divided by the number of children served to arrive at a tuition rate for each program. One advantage of this method is that predictable revenues reduce incentives to the provider to deliver costlier or unneeded services. In addition, this method recognizes unique program features that may result in unusually high or low costs. A weakness of this method is that providers are not encouraged to operate as cost effectively as possible.

- **Capitated Payment Systems** - Under this method, providers are paid a fixed dollar amount per enrollee, in advance, and assume financial risk for providing the full extent of the agreed upon services which each enrollee needs. The main benefit of this system is the incentive to providers to deliver the least intensive

and least expensive care that is appropriate for each client's needs. In addition, payments are fixed and do not increase if more services are provided. A weakness of this system is that providers may be predisposed to underserve clients or deliver less than optimal service in order to control costs to maintain or increase their profit. In addition, providers may try to avoid enrolling persons with high service demands. When using this system, it is very important to have a quality assurance function to ensure that the care delivered is efficient and high quality and that clients are protected from being underserved.

- **Partially Capitated Payment Systems** - This system combines features from the fee-for-service and capitated methods. For example, services would be reimbursed using the fee-for-service method up to a maximum number of instances per recipient. Any additional services above this cap would not be reimbursed. The cap also eliminates the incentive to overtreat clients that may be present with the traditional fee-for-service method. As with capitated methodologies, the actual setting of rates would be difficult, and since this method appears to be used infrequently, there are likely to be unpredictable consequences.

We also believe consideration should be given to including performance based criteria in developing a new reimbursement methodology. When we asked Department and provider officials what they thought of such a reimbursement system, many of the officials agreed there is a need for the concept, but indicated that it would be difficult to implement. The most common concern raised was how the Department would measure the effectiveness of provider efforts in light of the unique conditions of each provider's student populations.

One way to measure the effectiveness of provider efforts is to implement a performance measurement system. Such a system should include the establishment of measurable program goals and objectives, a routine assessment of the program's accomplishments in relation to those goals and objectives, and adjustments to the system to improve performance in the future.

We note that such a performance measurement system was established by the Department in 1995 to measure the educational accomplishments of the special education students served by VESID, which include the students in center-based special education programs. Moreover, VESID officials are in the process of developing learning standards and performance indicators for individuals with severe disabilities in order to comply with the Federal

Individuals with Disabilities Education Act (IDEA), which seeks to change the monitoring of special education programs from compliance orientation to goal orientation. According to a VESID official, VESID plans to use the performance information they get from this system to judge the quality of the providers' programs.

During our discussions with provider officials, concern was also expressed that, under a performance-based reimbursement system, some providers may set low-quality goals to ensure that they are fully funded. One official stressed the need for a quality assurance review by the Department to assess the appropriateness of provider goals. We found that VESID has already established such a process for evaluating providers' goals, and plans to make improvements in the process.

We commend Department officials for the progress made and planned by VESID. We encourage Department officials to work with program providers and other relevant parties to explore inclusion of the concept of performance-based criteria in the reimbursement process for special education services.

Other Matter

The Greenburgh Eleven School District provides special education programs to children with severe handicapping conditions. While we did not visit the District, in the course of our audit we determined that the District's per pupil costs ranked ninth highest among the 207 school-aged programs. For the 1995-96 school year, the District's approved tuition rate was $179 per child per day.

Our follow up showed that the reimbursable costs approved for the District included the salaries of 14 teachers who were removed from teaching duties in 1994 as well as the legal expenses incurred by the District in their efforts to bring disciplinary action against the teachers. The legal proceedings, which were initiated in 1994, had not been resolved as of October 31, 1998, and as required by the State Education Law, the teachers must receive full pay until the proceedings are resolved. (Since they were removed from their teaching duties, the teachers have been developing lesson plans for the school-age program). For the three school years ended in 1997, the legal expenses and the salaries of the 14 teachers cost the District more than $5 million, and these costs were included in the reimbursable tuition rates approved by the Department for the three years. Since the teachers must be paid until the legal dispute is resolved and the District is reimbursed for the teachers' salaries, there may not be a strong incentive for the two parties to settle the dispute.

In the absence of a strong incentive to the settle the dispute, it is important that the Department be as proactive as possible in seeing that this matter is resolved. One step that the Department needs to take is to determine, from a legal standpoint, whether it is correctly handling these costs for the tuition rate setting process.

Recommendations

1. During the tuition rate setting process, compare reported student-to-teacher ratios and student-to-teacher aide ratios to the ratios approved by VESID. Determine whether ratios that are significantly lower than the approved ratios can be justified by the circumstances of the programs. If a ratio cannot be justified, work with the provider to adjust accordingly to avoid excessive staffing costs from being included in the program's reimbursable tuition costs.

   (Department officials agree with recommendation number 1 and state they are currently in a transitional phase between a manual system of reviewing these ratios and a new computer system where the review could be done electronically. They also add that the implementation of regional rates for preschool programs by classroom model would eliminate the ratio concern for preschool programs and would allow additional staff time to further analyze school age programs.)

2. Require the providers to report detailed information about the kind and amount of therapy services needed by the students, the kind and amount of therapy services provided to the students, and the cost of these therapy services. Develop guidelines for evaluating the reasonableness of therapy costs (such as guidelines relating to the amount of direct time and non-direct time spent by therapists), and during the tuition rate setting process, assess the reasonableness of the therapy costs reported by the providers. Require provider justification when reported therapy costs are inconsistent with the guidelines. If such costs cannot be justified, work with the provider to decrease the costs and exclude excessive therapy costs from a provider's reimbursable tuition costs.

   (Department officials agree conceptually with recommendation number two. They state they will develop the necessary forms to receive the information from providers. They add that they need to seek approval from the Office of Regulatory Reform and the Consolidated Fiscal Report State Interagency Committee for any new forms.)

Recommendations (Continued)

3. Establish procedures for conducting a comparative analysis of the costs reported by special education program providers. Follow up with the providers to determine whether significant cost variances can be justified. Identify opportunities for improvement and best practices that can be shared with other providers.

4. Identify the reasons for the high costs incurred by the Infant and Child Learning Center, and determine whether the costs can be reduced without compromising the quality of program services.

5. Consider alternative provider reimbursement methodologies, including those which include performance-based criteria. If laws need to be changed to accommodate such methodologies, consider proposing the appropriate changes to the Legislature.

   (Department officials agree with recommendations number 3 through number 5.)

6. Be as proactive as possible in seeing that the dispute at the Greenburgh Eleven School District is resolved. Determine, from a legal standpoint, whether the Department is correctly handling the costs of the 14 teachers in the tuition rate setting process.

   (Department officials, agree with recommendation number 6. They state that the Department's authority in a Section 302a proceeding is very limited. They indicate that they have determined that inclusion of the costs of these teachers in the rate calculation process is appropriate in accordance with existing statutes. Officials conclude that there is very little else they can do regarding this process.)

Student-to-Staff Ratios at Selected Providers of Special Education Programs
1995-96 School Year

PROVIDERS	STUDENT-TO-TEACHER RATIOS		STUDENT-TO-TEACHER AIDE RATIOS	
	APPROVED MAXIMUM RATIOS	ACTUAL OVERALL RATIO	APPROVED MAXIMUM RATIOS	ACTUAL OVERALL RATIO
PRESCHOOL PROGRAMS				
BOCES ORLEANS-NIAGARA	11:1, 10:1, 9:1, 8:1, 7:1, 6:1	Not Available	11:1, 10:1, 9:1, 8:1, 7:1, 6:1, 3:1	Not Available
CHILD STUDY CENTER	12:1	10.73:1	12:1, 6:1	10.85:1
GINGERBREAD LEARNING CENTER	12:1, 8:1	11.97:1	12:1, 8:1, 6:1	5.99:1
HIGHBRIDGE ADVISORY COUNCIL	12:1, 6:1	9.79:1	6:1, 3:1	7.59:1
INFANT & CHILD LEARNING CENTER	12:1, 6:1	6.30:1	6:1, 3:1	3.53:1
KENNEDY CHILD STUDY CENTER	12:1, 6:1	8.84:1	12:1, 3:1	3.78:1
RAINBOW	12:1	12.39:1	6:1	6.03:1
SCHNEIDER CHILDRENS HOSPITAL	12:1, 10:1, 8:1, 6:1	5.9:1	6:1, 5:1, 4:1, 3:1	3.97:1
ST. AGNES HOSPITAL	12:1	7.96:1	6:1, 4:1, 3:1	2.94:1
STEPPINGSTONE DAY SCHOOL	12:1, 10:1, 8:1, 6:1	7.56:1	6:1, 4:1, 3.3:1	3.78:1
THESE OUR TREASURES	6:1, 4:1	4:1	6:1, 4:1	3.80:1
UCP WESTCHESTER	12:1, 9:1, 6:1	6.76:1	3:1	2.5:1
UCP QUEENS	12:1, 9:1, 6:1	11.5:1	6:1, 3:1	3.77:1
SCHOOL AGE PROGRAMS				
ABBOTT UFSD	12:1, 8:1	7.89:1	12:1, 8:1	6.73:1
BERKSHIRE UFSD	12:1	10.70:1	12:1	Not Available
CHILD SCHOOL	12:1, 8:1, 6:1	8.6:1	12:1, 8:1, 6:1	6.4:1
CLEAR VIEW SCHOOL	12:1, 6:1	6.75:1	12:1, 6:1, 3:1	3.17:1
GUSTAVUS ADOLPHUS LEARNING CTR.	8:1, 6:1	5.63:1	8:1, 6:1	3.86:1
JGB EDUCATION SERVICES	12:1	10.4:1	12:1, 3:1	2.73:1
SCHOOL OF THE HOLY CHILDHOOD	12:1, 8:1	7.54:1	12:1, 8:1	17.94:1
ST. DOMINIC SCHOOL	8:1, 6:1	5.00:1	8:1, 6:1	4.56:1
UCP SULLIVAN DIAG. TREATMENT CENTER	12:1	6.52:1	3:1	2.44:1
SUMMIT SCHOOL	12:1, 6:1	6.88:1	12:1, 6:1	6.60:1
UCP TRI-COUNTY	12:1, 6:1	7.89:1	12:1, 6:1, 3:1	3.51:1
UCP CAPITAL DISTRICT	12:1	7.60:1	3:1	3.14:1

Note - The actual ratios in the shaded boxes are either lower than the lowest approved ratio for the programs provided by that school or higher than the highest approved ratio for the programs provided by that school.

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Exhibit A

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March 18, 1999

Mr. Jerry Barber
Audit Director
State of New York
Office of the State Comptroller
A.E. Smith State Office Building
Albany, NY 12236

Dear Mr. Barber:

I am responding to your letter to Chancellor Hayden of February 25, 1999 transmitting the State Comptroller's draft audit report (98-S-39) on the process used by the State Education Department in setting tuition rates for schools that provide special education programs. We have reviewed the recommendations contained in the draft audit report and our comments are contained herein.

Recommendations 1 - During the tuition rate setting process, compare reported student-to-teacher ratios and student-to-teacher aide ratios to the ratios approved by VESID. Determine whether ratios that are significantly lower than the approved ratios can be justified by the circumstances of the programs. If a ratio cannot be justified, work with the provider to adjust accordingly to avoid excessive staffing costs from being included in the program's reimbursable tuition costs.

Response 1:

We agree with the recommendation. We informed your staff during their fieldwork that we were in a transitional phase between a manual system of reviewing these ratios and a new computer system where we could do this electronically. Program Services Reimbursement Unit (PSRU) staff, however, continued to periodically review these ratios in cases where material variances occurred. As you know, the approved staffing ratios are minimums and not maximums, so from a programmatic point of view staffing slightly above the minimum may not be an issue. Therefore, we cannot absolutely agree that costs related to staffing over the minimum would be disallowed. Also, the acceptable rates may be above the minimum for other reasons. For example while a program may be approved for 12 students to one teacher and an aide, the physical space of individual classrooms may in fact limit the number of students in a class to six. We will be reviewing this issue with the School Age Rate Methodology Workgroup as part of our discussions regarding the establishment of program enrollment capacities and the corresponding appropriate staffing levels. Once student capacities and appropriate staffing levels are established, any "excess" staffing would require programmatic justification. The implementation of regional rates for preschool programs by classroom model, would eliminate this concern for preschool programs and would allow additional staff time to further analyze school age programs.

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Recommendations 2 - Require the providers to report detailed information about the kind and amount of therapy services needed by the students. The kind and amount of therapy services provided to the students, and the cost of these therapy services. Develop guidelines for evaluating the reasonableness of therapy costs (such as guidelines relating to the amount of direct time and non-direct time spent by therapists), and during the tuition rate setting process, assess the reasonableness of the therapy costs reported by the providers. Require provider justification when reported therapy costs are inconsistent with the guidelines. If such costs cannot be justified, work with the provider to decrease the costs and exclude excessive therapy costs from a provider's reimbursable tuition costs.

Response 2:

We agree conceptually with the recommendation. Receiving a schedule providing the Individual Education Plan (IEP) requirements and the services actually provided from schools would allow the Department to monitor more closely whether the students are actually receiving the prescribed related services. Verification of such a schedule would need to occur on field audit as we would not be able to verify such data in original documents for 70,000 students during rate-setting desk reviews. We will bring this issue up at the School Age Rate Methodology Workgroup meetings. This schedule may be difficult to compile by providers with large populations since IEPs change during the year. Also, any new form that we would require would need to be approved by the Consolidated Fiscal Report State Interagency Committee. Since the Office of Regulatory Reform has been advocating fewer information requirements in the CFR document in recent years, approval for a policy direction that runs counter to this recommendation, could be problematic. We will develop such forms and submit them to these groups for review. Any data that we would receive from these new forms would be used to establish guidelines for determining reasonableness of related services costs and a reasonable standard percentages of therapist time devoted to direct contact time with the students.

Recommendation 3 - Establish procedures for conducting a comparative analysis of the costs reported by special education program providers. Follow up with the providers to determine whether significant cost variances can be justified. Identify opportunities for improvement and best practices that can be shared with other providers.

Response 3:

We agree with the recommendation. We believe that by reviewing classroom ratios and related service costs, we will be making a significant step in analyzing the cost differentials between programs. Salary levels and capital costs are categories that we know vary, sometimes significantly, between programs. Salary and capital, however, are areas we have little control over. This process should result in identifying opportunities for efficiency and best practices.

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Recommendation 4 - Identify the reasons for the high costs incurred by the Infant and Child Learning Center, and determine whether the costs can be reduced without compromising the quality of program services.

Response 4:

We agree with the recommendation. We will begin a more detailed review of this school's costs.

Recommendation 5 - Consider alternative provider reimbursement methodologies, including those which include performance-based criteria. If laws need to be changed to accommodate such methodologies, consider proposing the appropriate changes to the Legislature.

Response 5:

We agree with the recommendation. We have engaged stakeholder workgroups to review the rate setting methodologies of preschool and school age programs. We are proceeding with the development of a regional rate setting process for preschool programs and will be presenting our proposal to the Division of the Budget during the Summer of 1999. Our school age workgroup is still meeting at this time. With regard to using a performance based criteria in establishing tuition rates, over the course of the next 12 to 18 months, SED will:

- Continue to implement quality assurance monitoring visits to approved preschool and school age programs and determine whether programs are implementing IEP requirements. Programs failing to do so will be asked to develop corrective action plans and, in extreme cases, may be removed from the approved program list.

- Continue to refine our data collection systems in order to provide SED, wherever possible, with indicators that would alert us to problems associated with non-delivery of service. This includes:

- Development of an electronic master list of approved preschool programs, which would include the types of staffing ratios approved and the number of classes for each ratio.

- Capturing more child specific data on the STAC-1 forms such as class ratio and related service requirements to be used to compare what is actually occurring in schools versus what programs schools are approved to operate per the approved school listing above.

- The Program Services Reimbursement Unit (PSRU) is planning to provide access to VESID regional staff of school financial information residing on PSRU's mainframe. This will provide regional quality assurance staff with instant access to reported costs and enrollment figures.

- SED plans to assemble a team to explore in more depth the concept of performance-based reimbursement for students with disabilities.

Recommendation 6 - Be as proactive as possible in seeing that the dispute at the Greenburgh Eleven School District is resolved. Determine, from a legal standpoint, whether the Department is correctly handling the costs of the 14 teachers in the tuition rate setting process.

Response 6:

We agree with the recommendation. However, the Department's authority in a Section 3020a proceeding is very limited. We have determined that the inclusion of the costs of these teachers in the rate calculation is appropriate in accordance with existing statutes. There is very little else we can do regarding this process.

If you have any questions, please call Thomas Hamel at (518) 486-2991.

Sincerely,

Richard H. Cate

cc: Thomas Hamel

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